

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

**T.A NO. 424 OF 2009
(WRIT PETITION (CIVIL) NO.6434 OF 1998)**

EX NK PRATAP SINGH

...APPELLANT

V.

UNION OF INDIA AND OTHERS

...RESPONDENTS

ADVOCATES

**MR. C.P SINGH FOR THE APPELLANT
MR. ANIL GAUTAM FOR THE RESPONDENTS**

CORAM

**HON'BLE MR. JUSTICE S.S KULSHRESTHA, MEMBER
HON'BLE LT. GEN. S.S DHILLON, MEMBER**

J U D G M E N T

24.02.2011

1. Challenging the Summary Court Martial proceedings, whereby the petitioner was found guilty of having committed the offences under Army Act Sections 69 and 39(a) and sentenced to

be reduced to the ranks; to suffer rigorous imprisonment for one year; and to be dismissed from service, he filed W.P No. 6434 of 1998 before the Delhi High Court. On formation of the Armed Forces Tribunal, the writ petition was transferred to this Bench and is being disposed of by treating it as an appeal under Section 15 of the Armed Forces Tribunal Act 2007.

2. The appellant joined the Indian Army in the Rajput Regiment on 22.8.1980 and was posted to 19 Rajput after training. It was urged that purely in a case of self defence wherein there was a free for all exchange of blows with one of the JCOs, he was tried by a court martial on 10.3.1997 and sentenced (i) to be reduced to the ranks; (ii) to suffer rigorous imprisonment for one year; and (iii) to be dismissed from service. It was urged that there was complete lack of evidence to convict him and that the pre-trial investigation and trial was illegal and without any jurisdiction.

3. The appellant stated that in the month of October 1996, when the unit was deployed in the desert sector, he was posted along with a few other personnel of his unit to a Forward

Observation Post, which was manned by the Border Security Force. Nb. Sub Puran Singh of his unit was also posted to the same post. There was a quarrel between the appellant and Nb. Sub Puran Singh, wherein Nb Sub Puran Singh hit the appellant and the appellant merely defended himself. Nb Sub Puran Singh had picked up an iron picket and hit the appellant. In the scuffle, the appellant also responded and the JCO sustained some injuries. The appellant also received injuries on the head. Since Nb Sub Puran Singh threatened the appellant by stating that he would have him shot, the appellant got scared and ran away from the post in order to seek advice/counselling from his village elders. On reaching home, he got himself treated and it took almost a month for the injuries to heal, after which the appellant along with his father went back to the unit, where the appellant handed himself over to the Commanding Officer. In the process of handing himself over to the Commanding Officer, the appellant alleges that he was made to sign some documents and his signatures were also obtained on some blank papers. Thereafter, he was locked in the Quarter

Guard and remained there till he was shifted to the Civil Jail at Ganga Nagar on 10.3.1997.

4. The first and foremost contention of the appellant was that he had not signed the plea of “guilty” on the original record of the court martial and in actual fact, his signatures were taken on a blank piece of paper after the trial and the certificate under Army Rule 115(2) typed on it and appended to the proceedings as an overleaf.

5. Counsel for the appellant stated that the appellant was informed on 5.3.1997 that there would be a summary trial for an offence under Army Act Sections 39(a) and 40(a) and accordingly he appended his signatures to some papers. The appellant was quite relieved since summary trial meant that he could only be given a summary punishment under Army Act Section 80 and the appellant being a substantive Naik could at best be given a severe reprimand. Therefore, he was shocked when he was tried by a Summary Court Martial and sentenced to be reduced to the ranks, dismissed from service and to undergo

rigorous imprisonment for one year. The appellant argued that the certificates signed by him, wherein he had consented to dispense with the attendance of the witnesses at his “summary trial” as well as nominating Sub Lal Chand as “friend of the accused” during “summary trial”. It, therefore, implied that it was a summary trial he would be subjected to and not summary court martial. The appellant stated that it was great injustice and prejudice to him that instead of summary trial, he was tried by a Summary Court Martial. It was also argued that although he was accused of causing grievous hurt to Nb Sub Puran Singh, there was no witness who has given any description, nature or classification of injury to the JCO. Even Nb Sub Puran Singh has not mentioned as to whether he has sustained any injury and neither was any doctor or medical witness examined by the court and, therefore, this most essential ingredient of the charge stood disproved. All along the appellant has stated that he had acted in self defence and this was borne out by the fact that even the charge sheet mentioned that he had hit the JCO under sudden and grave provocation.

6. It was further argued that although there were many officers present in the unit, a JCO, Sub Lal Chand, who could not even understand English, was detailed as his “friend of the accused”. Since the entire proceedings of the court martial were held in English, neither he nor the friend of the accused, Sub Lal Chand, had any idea as to what was happening and he merely appended his signatures wherever he was required to do so. The appellant also argued that since he was tried under Army Act Section 69, there was no sanction of the higher authorities, i.e. the Sub Area Commander, which was mandatory under the Army Act. Lastly, the appellant argued that the sentence awarded to him was harsh and grossly disproportionate with the offence allegedly committed by him, in that the first charge admitted that he had hit the JCO on sudden and grave provocation and the second charge of absent without leave, could well have been addressed by a few days of detention/imprisonment in military custody and there was no need to dismiss him and subject him to rigorous imprisonment for a year. On the date of his dismissal, the appellant had 16 years, 6 months and 18 days of service, which was more than adequate

to earn him pension, which was presently being denied to him on account of his harsh and grossly disproportionate punishment.

7. The brief facts of the case are that: The appellant as well as Nb Sub Puran Singh were deployed with 172 Battalion BSF at Karanpur in the Ganga Nagar Sector of Rajasthan in the month of December 1996. On 18.12.1996, there was a heated exchange of words followed by exchange of blows between the appellant and Nb Sub Puran Singh, after which the appellant ran away from the post and was absent without leave till he voluntarily rejoined the unit on 19.1.1997. The appellant was charged for two offences as under:

FIRST CHARGE
Army Act Section 69

**COMMITTING A CIVIL OFFENCE THAT IS TO SAY,
VOLUNTARILY CAUSING GRIEVOUS HURT ON GRAVE
AND SUDDEN PROVOCATION, CONTRARY TO
SECTION 335 OF THE INDIAN PENAL CODE,**

in that he,

at Karanpur, on 18 Dec 96, voluntarily caused grievous hurt to JC-478267P Naib Subedar Puran Singh of the same unit on grave and sudden provocation given to him by the said Naik Subedar Puran Singh.

SECOND CHARGE
Army Act Section 39(a)

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

at the place and date aforesaid, absented himself without leave until he voluntarily rejoined his unit (19 RAJPUT) on 19 Jan 97.

8. Counsel for the respondents stated that a very deliberate investigation was done once the appellant rejoined from unauthorised leave on 19.1.1997. An initial hearing under Army Rule 22 was conducted on 10.2.1997, wherein six witnesses were examined and documentary evidence were produced to prove the charges. Nb Sub Puran Singh, who had been assaulted by the appellant, was also one of the witnesses. The appellant was present during the hearing, on the conclusion of which the Commanding Officer ordered summary of evidence to be recorded in writing. Thereafter, summary of evidence was conducted and completed on 15.2.1997, wherein a total of eight witnesses were examined. Sub Harphool Singh (PW 1) of the same unit of the

appellant was also present at 172 BSF Battalion location at Karanpur on 18.12.1996 when the incident occurred. He has stated that he saw the appellant at approximately 1745 hours that day going towards the room of Nb Sub Puran Singh and at approximately 1805 walking briskly towards the main road. Thereafter, when the witness went towards the room of Nb Sub Puran Singh, there was no response to his knocking and after peeping through the window, he saw Nb Sub Puran Singh lying on his bed and holding his head, which was bleeding profusely. He arranged a vehicle which took Nb Sub Puran Singh to the Civil Hospital, Karanpur and thereafter to Military Hospital, Ganga Nagar. The appellant did not prefer any cross examination. Nk Om Prakash of 17 JAT (PW 2), who was also present at the post during that time, has also testified to the same facts and the evacuation of Nb Sub Puran Singh after he was hit. Sep Damodar Singh (PW 3) was also present at the post on 18.12.1996 and was present during the time when there was some verbal altercation between the appellant and Nb Sub Puran Singh about passing of the "situation report" to the various HQs on telephone. Nb Sub Puran Singh

admonished the appellant that being a Senior NCO, he was unable to do his work and that he (Puran Singh) had to do the appellant's work also. This witness also saw the appellant walking briskly towards the main road at approximately 1800 hours. Nb Sub Puran Singh (PW 4) has stated that the altercation was about the appellant's inability to perform his duties, in that he was unable to receive the situation report from the border out post and pass them on to the higher HQs. He admonished the NCO and thereafter did the job himself. The JCO went on to state that the appellant entered his room and bolted it from inside and told the JCO that since he had humiliated him, he would teach him a lesson. The appellant then took out an iron picket from inside his shawl that he was wearing and struck the JCO on his head, after which the JCO became unconscious and could not recollect what happened. This material witness was also not cross examined by the appellant. Sub Dharam Pal (PW 5) of 19 Rajput was the Senior JCO of D Company and has testified to the facts that he was informed about the appellant missing from 172 BSF Battalion location at approximately 2100 hours. Lt Col A.K Madhok (PW 6)

was the Second in Command, who has stated that on 19.1.1997, at approximately 1130 hours, the appellant reported from his spell of unauthorised leave and gave a confessional statement in the presence of his Company Commander Maj. V.K Singh and Capt. Virender Singh. The confessional statement was read over to the appellant and he signed it as correct. The confessional statement is as given below:

VOLUNTARY STATEMENT GIVEN BY NO.2979087N NK
PRATAP SINGH ON 19 JAN 1997 ON REJOINING THE
UNIT

1. I, No.2979087N, Nk Pratap Singh of 'D' Coy 19 RAJPUT wish to make a confessional statement.
2. I was sent to Karanpur, 172 BSF BN on 19 Nov 1996 as part of EW Det placed at Karanpur. Nb Sub Puran Singh on 18 Dec 1996, who was also in the EW Det told me that, I am a miser and that I am not doing my work properly. He also told me in the past also my work has not been good. He also abused me and I feel that the 17 JAT EW Det, which was also in Karanpur was against me. Nb Sub puran Singh also told me that "in the past I had beaten Sub Sant Ram of 'D' Coy and I was not Court Martialled and now I should be Court Martialled and sent out of service." I was this way troubled.
3. On 18 Dec 1996 in the evening at approx 1630h I was taking situp. I asked the BSF exchange to connect me to the forward posts to take situp. The exchange told me to wait for sometime as all lines

were busy. I once again asked the exchange after sometime to connect me to the posts, but I was given the same answer that all lines are busy. The third time I was connected but due to cross-talk I could not speak to the posts. Nb Sub Puran Singh was getting annoyed at me, but I told him that there is a problem to speak to the posts. Nb Sub Puran Singh also abused me and shook the empty ammunition container on which I was sitting with his foot and I fell down. I told him that I should be sent back to the battalion and someone else should come in my place. He now told me to go the other telephone which was in Nb Sub Puran Singh's room. This telephone was out of order. After sometime Nb Sub Puran Singh also came to the same room.

4. Nb Sub Puran Singh after coming to his room abused me, pushed me and slapped me. I now pushed Nb Sub Puran Singh and he fell on his bed. There was a picket lying in the cupboard made in the wall. I took the picket and hit Nb Sub Puran Singh on his head twice. I now felt that I am in danger and hence fled from BSF Bn.

5. My father Shri Shankar Singh has brought me today i.e. 19 Jan 1997 at approx 1130h back to 19 RAJPUT.

6. This statement has been made on my own willingness. I am making it without any promise, threat or inducement from any source.

7. The above statement has been read over to the individual in the language (Hindi) he understands and he signs it as correct.

Sd/- No.2979087N Nk PRATAP SINGH
19 Jan 1997

8. The above statement has been recorded by the undersigned IC-34799F, Lt Col A K Madhok in the presence of two witnesses, SS-34436X Maj U K Singh and RC-0493M Capt Virender Singh on 19 Jan 1997.

Sd/- IC-34799F, Lt Col A K Madhok

Sd/-
SS-34436X Maj UK Singh
Witness No.1

Sd/-
RC-0493M Capt Virender Singh
Witness No.2

Nb Sub Yugendra Mohan (PW 7) has testified about the same facts as PW 6 and also produced the material exhibits that were required by the court. Nb sub Clk Rakesh Kumar Sharma (PW 8) has testified to the documentary part of his hospital admission and also his absence without leave.

9. None of the eight witnesses were cross examined by the appellant, and his signatures appeared below the testimony of each witness. On conclusion of the summary of evidence, the appellant made a voluntary statement as under:

Statement of the Accused

60. I plead guilty to my charge of hitting JC 478207P Nb/Sub Puran Singh by a short iron picket on his head and then becoming AWL. I request for a lenient view of the court for punishment.

61. The above statement has been read over to the accused No 2979087N Nk Pratap Singh in the presence of 2Lt SS Shekhawal in the language he understands and he signs it as correct.”

10. Counsel for the respondents stated that all along the plea of the appellant has been that he was guilty. He had given a voluntary statement on 19.1.1997 admitting that he had hit the JCO and also that he had absented himself without leave. During Army Rule 22 hearing on 10.2.1997, the appellant had specifically stated and signed a statement as follows: **“I acknowledge my guilt, I belong to a poor family, I have five children and old parents. I request that I may be leniently dealt with otherwise my children will suffer. I seek pardon from you and other superiors.”** Thereafter he has made his voluntary statement at the summary of evidence admitting his guilt and finally at the SCM, he has pleaded guilty to both the charges and signed the certificate

under Army Rule 115(2). Thereafter, when asked to make a statement of mitigation of punishment, he has again stated: “**I acknowledge my guilt, I ask for pardon. My request is I remain happy and look after my family, my parents and serve God.**” Therefore, all along, on five distinct occasions, he had accepted his guilt and the plea of guilty is in consonance with his earlier stance all along.

11. With regard to non-signing on the original record of the SCM and the certificate of AR 115(2) being appended as an overleaf and not on the original SCM proceedings, it was argued by counsel for the respondents that there was a specific endorsement by the Court on the original proceedings stating that AR 115(2) certificate is “as per the attached slip”. When such specific endorsement has been made by the Court that for whatever reasons the certificate under AR 115(2) is not on the original proceedings but attached to the proceedings, there is a certain presumption with regard to the authenticity of the certificate and it does not fall within the decision of the Delhi High Court in **LNK Gurdev Singh v. Union of India** (W.P (C) No. 776 of 1995 dated

1.2.2008), which was followed by this Tribunal in **Ex Nk Subhash Chand v. Union of India and others** (T.A No. 723 of 2009 dated 27.4.2010). Furthermore, in addition to his signatures on AR 115(2), he has also signed on Page "G" of the proceedings, wherein he was found guilty and also on the last page of the proceedings, wherein his sentence is recorded. Therefore, it is evident that the appellant was present throughout the proceedings and that the proceedings were conducted in his presence.

12. It was also stated by the respondents that there was no question of the appellant acting in self defence, because Nb Sub Puran Singh had given a categorical statement that the appellant had hidden the iron picket in his clothes and had removed the iron picket from his clothes when he came to assault him, and, therefore, he had come with a pre-conceived intention of hitting the JCO. In any case, with regard to self defence, the burden of proof rests on the appellant. His guilt can also be borne out by the fact that immediately after committing this crime, he ran away from the scene of occurrence and remained absent for

over a month. While the appellant states that he was injured, till date, he has not produced even a shred of evidence to show as to whether he was injured in such scuffle and what treatment or medication was given to him in which hospital. Therefore, the plea that he acted in self defence is completely fabricated and without any base, whatsoever.

13. With regard to the fact that he was to be tried by summary trial, it was clarified that what the appellant was referring to was summary disposal and not summary trial. He had been categorically informed that he was to be tried by a Summary Court Martial and his entire documentation specifically states so. With regard to detailment of a JCO as “friend of the accused”, a certificate was produced by the appellant, wherein he has nominated Sub Lal Chand as his friend during the court martial proceedings.. It was also argued by the respondents that the appellant was earlier punished in his career for striking a superior officer, in that he had used criminal force to his superior officer on 26.7.1987, for which he was given 28 days rigorous imprisonment and 14 days detention in military custody and this was his second

such offence. It was also clarified that Nb Sub Puran Singh, after being hit, had to be placed on “dangerously ill list”, which is the most critical classification of a patient in the medical parlance in the Army. The JCO had to be transferred to the Army Hospital, Delhi for treatment, which is indicative of the criticality of the injury caused to the JCO.

14. Considering the above facts, we do not find any reason to interfere with the impugned order. Accordingly the appeal is dismissed.

(S.S DHILLON)
MEMBER

(S.S KULSHRESTHA)
MEMBER